

Forest Service, USDA

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case the officer shall promptly follow-up in writing.

§ 223.236 Unilateral termination.

(a) *Reasons for Unilateral Termination.* The Forest Service may unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) Any of the reasons provided in § 223.235(a);

(2) Material breach or continued violation of the contract, permit or other authorizing instrument;

(3) Violation of any Federal or State laws or regulations related to:

(i) Obtaining, attempting to obtain, selling, trading, or processing special forest products;

(ii) Obtaining, attempting to obtain, or performing a public contract or sub-contract;

(iii) Harming or damaging public lands or protected species; or

(iv) Business integrity, honesty, or responsibility.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral termination of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the termination.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accompanied by supporting documentation that fully substantiates the claim.

(3) No compensation shall be provided if the unilateral termination is due in whole or in part to the reasons set forth at § 223.236(a)(2) or (3).

(c) *Authority to unilaterally terminate.* The Chief, or the Chief's designee, has the authority to unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products. Any such termination shall be issued in writing, ex-

cept when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

§ 223.237 Request for delay, suspension, modification, or termination.

(a) *Request.* A person authorized to harvest special forest products may request delay, suspension, modification, or termination of their contract, permit, or other authorizing instrument pursuant to the provisions set forth in the contract, permit, or instrument, if any, or for another reasonable cause, including without limitation, catastrophic damage to the product or substantially changed market conditions. Any such request must be submitted in writing and include a detailed explanation of all relevant circumstances supporting the request.

(b) *Response.* The Forest Service shall respond to any request for delay, suspension, modification, or termination in accordance with applicable provisions in the contract, permit, or other authorizing instrument, or, in the absence of such provisions, respond in a manner that is reasonable in light of the request's circumstances. The Forest Service may deny any request, in whole or in part, in accordance with the provisions of the relevant contract, permit, or instrument, or, in the absence of such provisions, at the Agency's discretion.

(c) *Authority.* The Contracting Officer administering a sale or a superior officer has the authority to deny or grant any request by a person authorized to harvest special forest products to delay, modify, suspend, or terminate a contract, permit, or other authorizing instrument. The Forest Service's response to a request for delay, modification, suspension, or termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

§ 223.238 Free use authorization to U.S. Army and Navy.

Subject to delegations of authority by the Chief, Regional Foresters may approve the harvest of special forest products by the U.S. Army and Navy

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for the purposes identified at 16 U.S.C. 492.

§ 223.239 Free use by individuals.

(a) *Free use.* A person may harvest a special forest product from National Forest System lands free of charge for personal, non-commercial use up to the amount or quantity authorized by a designated Forest Service officer, a Forest Supervisor, or a Regional Forester, as delegated at 36 CFR 223.8.

(b) *Free use without a permit up to the incidental use harvest level.* No permit is required for the free use of a special forest product at or below that product's incidental-use harvest level, which shall be determined at the discretion of the regional forester or a subordinate officer. The incidental use harvest level covers small amounts of special forest products, such as cones, mushrooms, berries, acorns, black walnuts, or medicinal roots. Any free use of a special forest product that does not have an incidental-use harvest level is subject to this section's permit requirements.

(c) *Free-use permit requirement.* No person seeking free use of a special forest product, except one identified in § 223.239(e), may harvest a special forest product above the product's incidental-use harvest level without submitting an application to a forest officer and obtaining a free-use permit, unless the permit requirement has been waived for a specific special forest product in a designated free-use area.

(d) *Contents of the permit.* The permit shall indicate the type, amount, and/or value of the product to be harvested, the permit's duration, and shall contain other restrictions and requirements as appropriate.

(e) *Free use without a permit for members of Tribes with treaty or other reserved rights related to special forest products.* A member of a Tribe with treaty or other reserved rights related to special forest products retains his/her ability to harvest such products in full accordance with existing rights, including free-use harvest without obtaining a free-use permit, as specified in treaty or other reserved rights.

(f) *Free use without a permit upon the request of the governing body of a Tribe.* At the Agency's discretion, responsible

forest officers may, upon the request of an authorized representative of the governing body of a Tribe, issue a permit that would not otherwise be required under paragraph (e) of this section to a Tribe with treaty or other reserved rights related to special forest products for the free use of a specified quantity of special forest products. That Tribe may then allocate specified quantities of the special forest product(s) to individual Tribal members, up to the maximum amount specified in the Tribal free-use permit. Any Tribe issued such a permit must provide the Forest Service with information related to the permitted harvest, upon request.

(g) *Free-use restrictions.* A Forest Officer may set conditions on the free-use harvest of a special forest product or deny the free use of a special forest product. Reasons for denying free-use access or setting conditions on free use, except as specified in § 223.240, may include, but are not limited to:

- (1) Ensuring public safety;
- (2) Preventing interference with Forest Service and/or commercial operations;
- (3) Ensuring the sustainability of a special forest product; or
- (4) Otherwise protecting National Forest System land.

(h) *Unilateral termination of a free-use permit.* The responsible forest officer, or any superior officer, may terminate a free use permit without compensation at any time for reasons including, but not limited to, resource protection, weather factors, fire season, road access, conflicts with other users, or permit violations.

(i) *Subsistence in Alaska.* This section does not affect subsistence uses implemented under Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126).

§ 223.240 Tribes and treaty and other reserved rights.

Tribes with treaty or other reserved rights related to special forest products retain their ability to harvest special forest products in full accordance with existing rights. However, consistent with all applicable rights, Regional Foresters may set conditions on Tribes